

BRIAN PRUDE §  
v. § CIVIL ACTION NO. 9:09cv98  
DIRECTOR, TDCJ-CID §

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The Magistrate Judge ordered the Respondent to answer the petition. Prude has filed a response to the answer. The Respondent also furnished copies of the state court records, including a tape of the disciplinary hearing at issue.

After review of the pleadings and records, the Magistrate Judge issued a Report recommending that the petition be denied. The Magistrate Judge analyzed each of Prude's claims and concluded that he had not been denied due process with regard to any of the allegations which he raised. The Magistrate Judge also recommended that Prude be denied a certificate of appealability *sua sponte*.

Prude filed objections to the Magistrate Judge's Report on October 22, 2009. In his objections, Prude says that his "motion for discovery" was denied and that the Court did not allow for "his facts" to be proven, through such means as a use of force video tape and photographs, as well as witnesses to the medical treatment which he received.

As the Magistrate Judge correctly observed, the federal district court cannot re-try the prison disciplinary case *de novo*. Smith v. Rabelais, 659 F.2d 539, 545 (5th Cir. 1981). Prude's motions for discovery were denied prior to the filing of a responsive pleading, and Prude did not show good cause for the requiring of discovery in any event. Furthermore, as the Magistrate Judge said, in the context of prison disciplinary proceedings, the Constitution requires due process, not error-free decision-making. McCrae v. Hankins, 720 F.2d 863, 868 (5th Cir. 1983). Prude's pleadings and objections appear to be focused on his contention that the disciplinary hearing officer arrived at the wrong conclusion; he did not show and has not shown that he was denied the process which he was due under the Constitution of the United States. Prude's objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings in this case, including the original petition and the Petitioner's motion for summary judgment, the answer filed by the Respondent, the Petitioner's response thereto, the Report of the Magistrate Judge, the Petitioner's objections thereto, the state court records, and all other pleadings, documents, and records in the

case. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Petitioner's objections are without merit. It is accordingly

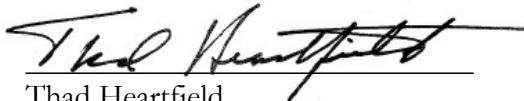
ORDERED that the Petitioner's objections are overruled and that the Report of the Magistrate Judge is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice. It is further

ORDERED that the Petitioner Brian Prude is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

**SIGNED** this the 26 day of **October, 2009**.

  
Thad Heartfield  
United States District Judge